

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PENTAIR WATER TREATMENT (OH)
COMPANY (FORMERLY KNOWN AS
ESSEF CORPORATION)

and

PENTAIR WATER POOL & SPA, INC.
(FORMERLY KNOWN AS PAC-FAB,
INC.)

and

PENTAIR WATER BELGIUM BVBA
(FORMERLY KNOWN AS STRUCTURAL
EUROPE N.V. FORMERLY KNOWN AS
SFC)

Plaintiffs,

- against -

THE CONTINENTAL INSURANCE
COMPANY (AS SUCCESSOR BY
MERGER TO FIDELITY & CASUALTY
INSURANCE COMPANY OF NEW YORK)

and

CNA INSURANCE COMPANIES

Defendants.

**OPPOSITION TO DEFENDANTS'
PARTIAL MOTION TO DISMISS**

1:08-cv-03604 (BSJ)

**PLAINTIFFS' OPPOSITION TO DEFENDANTS'
PARTIAL MOTION TO DISMISS THE COMPLAINT**

Plaintiffs Pentair Water Treatment (OH) Company (f/k/a Essef Corporation) ("Essef"), Pentair Water Pool & Spa, Inc. (f/k/a Pac-Fab, Inc.) ("Pac-Fab") and Pentair Water Belgium BVBA (f/k/a Structural Europe N.V. f/k/a SFC) ("SFC") (collectively "Plaintiffs"), respond in opposition to Defendants and state as follows:

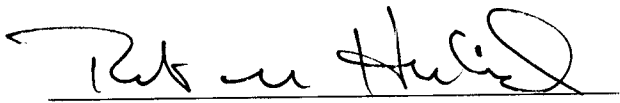
Plaintiffs, pursuant to Federal Rule of Civil Procedure 15, served and filed a First Amended Complaint upon Defendants The Continental Insurance Company

("Continental"), as successor by merger to The Fidelity & Casualty Insurance Company of New York ("Fidelity"), and CNA Insurance Companies ("CNA") on June 18, 2008. See First Amended Complaint attached as Exhibit A to the accompanying declaration.

For the foregoing reason, Defendants' Motion to Dismiss the Complaint and motion for an order dismissing Plaintiffs' third claim for relief and dismissing CNA Insurance Companies as a Defendant, filed on June 5, 2008 as Document # 8, is moot.

WHEREFORE, Plaintiffs respectfully request that Defendants' Partial Motion to Dismiss the Complaint be DENIED.

June 19, 2008

By: 

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**ATTORNEY FOR PLAINTIFFS
PENTAIR WATER TREATMENT (OH)
COMPANY (FORMERLY KNOWN AS ESSEF
CORPORATION), PENTAIR WATER POOL &
SPA, INC. (F/K/A PAC-FAB, INC.) AND
PENTAIR WATER BELGIUM BVBA (F/K/A
STRUCTURAL EUROPE N.V. F/K/A SFC)**